

## Department of the Army, DoD

## § 536.34

(5) Where a claim for the same injury has been filed under the FTCA and the denial or final offer applies equally to such claim, the letter of notification must advise the claimant that any suit brought as to any portion of the claim under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, the claimant must be advised that if suit is brought, action on any appeal will be held in abeyance pending final determination of such suit.

(b) *Action on appeal.* (1) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this section. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure all allegations or evidence presented by the claimant, agent or attorney are documented in the file; and that all pertinent evidence is included in the file. If the claimant states that he or she appeals but does not submit supporting materials within the 60 day appeal period or an approved extension thereof, the appeal will be treated as being on the record as it existed at the time of denial or final offer. Unless action under paragraph (b)(2) of this section is taken; the claim with complete investigative file including any additional investigation required and a memorandum of opinion will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(2) If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates that the appeal should be granted, in whole or in part, the settlement authority who last acted on the claim or his or her successor will attempt to settle the claim. If settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (b)(1) of this section.

(3) As to an appeal that requires action by TJAG, The Assistant Judge Advocate General (TAJAG), or the Secretary of the Army, or designee, the Commander, USARCS may take the ac-

tion in paragraph (b)(2) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(4) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claims file to be used in considering the appeal should be granted unless access is not permitted by law or regulation.

### § 536.33 Attorney fees.

In the settlement of any claim under §§ 536.20 through 536.35, attorney fees shall not exceed 20 percent of the final cost to the United States of the award.

### § 536.34 Payment of costs, settlements, and judgments related to certain medical and legal malpractice claims.

(a) Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, or paramedical, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists) of DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment; and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information, and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

(b) Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for injury or loss of property caused by any attorney, paralegal, or other member of a legal staff within the DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in connection with providing legal services while